



Federal Communications Commission
Washington, D.C. 20554

October 11, 2007

DA – 07-4213

Lieutenant Mark K. Lepinski
Bergen County Police Department
Communications Division
66 Zabriske Street
Hackensack, New Jersey 07601

Dear Lieutenant Lepinski:

This is in reply to your September 6, 2007 waiver request (Request) filed on behalf of Bergen County, New Jersey (Bergen County). Bergen County requests a waiver of Section 90.157 of the Commission's rules to allow 800 MHz NPSPAC stations licensed under call signs WPAP561 and WPLU645 to be in a "non-operating" status for more than one year without the licenses automatically canceling.¹

In support of the waiver request, you note that Bergen County is currently in the process of improving its radio communication system.² You also state that at the same time Bergen County is working to reconfigure its 800 MHz system in accordance with the Commission 800 MHz rebanding requirements. According to you, the stations authorized under the two call signs have been "turned off" during the County's radio system improvement project. Bergen County would like to keep these stations in a non-operating status until the County's 800 MHz system has been reconfigured and all channels can be integrated into the new county radio system.³ You contend that to put these stations back into service only to have to shut them down again to be adjusted to conform with the new 800 MHz reconfiguration channels would be a waste of resources and delay overall implementation.⁴ Consequently, you request a waiver under Section 1.925 of the Commission's rules.

Section 1.925(b)(3) of the Commission's rules allows us to grant a waiver when the waiver proponent shows that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary

¹ Under Section 90.157 of the Commission's rules, a station license cancels automatically upon permanent discontinuance of operations. In general, for the purposes of this rule section, stations that have not been operated for more than one year or more are considered to have been permanently discontinued. *See* 47 C.F.R. § 90.157.

² Request at 1.

³ Request at 2.

⁴ *Id.*

to the public interest, or the applicant has no reasonable alternative. For the reasons below, we find that grant of the requested waiver is warranted.

The underlying purpose of Section 90.157 is to discourage spectrum warehousing (*i.e.*, keep licensees from hoarding channels when others may have a critical need).⁵ Bergen County states that the stations in question are currently “deconstructed” because of the County’s radio communication system improvement project and cannot readily be “reengaged” until 800 MHz reconfiguration is complete.⁶ Based on the record before us, we conclude that strict enforcement of Section 90.157 in this instance would not serve its underlying purpose and would be contrary to the public interest. In this case, the stations had been constructed. Thus, we believe warehousing is not an issue here.

Further, in adopting the 800 MHz rebanding rules, the Commission has noted numerous times that it is committed to ensuring that band reconfiguration does not result in an adverse effect on public safety communications and operations.⁷ In doing so, the Commission has stressed the importance of taking a flexible and reasonable approach when addressing 800 MHz rebanding issues.⁸ Granting the waiver is consistent with these objectives by giving Bergen County the flexibility to make necessary improvements to its system without incurring unnecessary costs and delays.⁹ Finally, we note that if 800 MHz reconfiguration were the only reason the stations in question were in a non-operating status, a waiver of Section 90.157 would not be needed.¹⁰ For these reasons, we grant a waiver of Section 90.157 for stations authorized under WPAP561 and WPLU645 until the Commission’s deadline for completing reconfiguration – June 26, 2008.¹¹

⁵ Amendment of Parts 1 and 90 of the Commission’s Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Notice of Proposed Rule Making*, PR Docket No. 90-481, 5 FCC Rcd 6401 at ¶ 6.

⁶ Request at 2.

⁷ See *e.g.*, Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd at 14969 ¶ 26 (800 MHz Report and Order).

⁸ See *e.g.*, 800 MHz Report and Order, 19 FCC Rcd at 15075 ¶ 201 (Commission will allow parties involved in the relocation process a degree of flexibility that would not be achievable if rigid rules were set). See also, Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Minimum Cost Order*).

⁹ It is also consistent with past Commission action. See County of Mecklenburg Request for Waiver of Section 90.157 of the Commission’s Rules, *Order*, 21 FCC Rcd 7213 (WTB PSPWD 2006).

¹⁰ As part of the 800 MHz rebanding plan, the Commission envisioned that 800 MHz licensees could shut down their operations temporarily to accommodate band reconfiguration from one part of the 800 MHz band to another. The Commission further recognized that some stations might have to shut down for significant periods of time. In order to avoid the inadvertent cancellation of station licenses, the Commission stated that the provisions of Section 90.157 will not apply to stations that have been shut down in order to accommodate the Commission’s rebanding plan. Accordingly, the Commission adopted new rule Section 90.677, which states that for the limited purpose of 800 MHz band reconfiguration, Section 90.157 does not apply. See 47 C.F.R. § 90.677.

¹¹ After the waiver expires, Bergen County must file a construction notification on FCC Form 601.

ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Bergen County IS GRANTED to the extent indicated above.

Sincerely,

Thomas J. Beers
Deputy Chief, Policy Division
Public Safety and Homeland Security Bureau